Supreme Court, U.S.
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No. 93-319

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

STEPHEN P. RASCH,

Petitioner,

v.

NATIONAL RAILROAD PASSENGER CORPORATION, D/B/A AMTRAK,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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RESPONDENT NATIONAL RAILROAD PASSENGER CORPORATION'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Does Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*, require an employer to attempt accommodation of an employee's religious beliefs where no accommodation is possible without violating a *bona fide* seniority system created by a collective bargaining agreement, and thus imposing undue hardship on that employer?

LIST OF PARTIES

The parties to the proceedings below and to this Petition are: Petitioner Stephen P. Rasch, an employee of the National Railroad Passenger Corporation ("Amtrak"); and Respondent, the National Railroad Passenger Corporation ("Amtrak"), a for-profit corporation created by Congress to operate national rail passenger service.

Respondent has no parent companies, subsidiaries or affiliates to list pursuant to Rule 29.1.

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RESPONDENT NATIONAL RAILROAD PASSENGER CORPORATION'S BRIEF IN OPPOSITION

Respondent National Railroad Passenger Corporation ("Amtrak") respectfully requests that this Court deny the petition for writ of certiorari submitted by Petitioner Stephen P. Rasch seeking review of the decision rendered by the United States Court of Appeals for the District of Columbia Circuit in this case.

COUNTERSTATEMENT OF THE CASE

Petitioner Stephen P. Rasch is employed by Amtrak as an Assistant Conductor. The terms and conditions of his employment are governed by the collective bargaining agreement between Amtrak and the United Transportation Union ("UTU"). Petitioner's Appendix (herein-

after "Pet. App.") at 7a. Petitioner challenges his 1990 termination from Amtrak employment for excessive absenteeism as a failure to reasonably accommodate his religious beliefs in violation of Title VII of the Civil Rights Act of 1964 (hereinafter "Title VII"), 42 U.S.C. §§ 2000e *et seq.*, even though any possible accommodation would have forced Amtrak to violate the seniority provisions of the UTU Agreement.

The Collective Bargaining Agreement and the "Extra Board"

Amtrak hired Petitioner as an Assistant Conductor at its Zone 5 Crew Base, located in Washington, D.C., on April 26, 1987. Pet. App. at 7a. He bid for this position under the "bid and bump" system established by the UTU Agreement, which awards work assignments according to seniority. Pet. App. at 8a.

Because Petitioner had relatively little seniority initially, he worked the "Extra Board" during substantially all of his first 19 months at Amtrak. *Id.* Extra Board employees do not have a fixed assignment. Instead, they work many different trains on an "as-needed" basis, when the regularly assigned crew members cannot . *Id.* [1] Extra Board employees are guaranteed full-time pay and benefits, but must remain on call seven days a week, 24 hours a day. *Id.*

Petitioner never told anyone at Amtrak that his religion prevented him from working during certain periods before he was hired. Indeed, Petitioner's employment application stated that he could work any shift. *Id.* Then, after he began working, Petitioner began calling in sick frequently, usually on Friday and Saturday, but sometimes on other days as well. Only then did Petitioner inform Amtrak management that he could not work from

[1] Additionally, the Assistant Conductors for one of Amtrak's regularly scheduled Friday trains in Zone 5 always are selected from the Extra Board staff. *Id.*

sundown Friday to sundown Saturday because his religion prohibited him from doing so.[2]

During 1987, Petitioner's supervisor excused him repeatedly from a Friday or Saturday assignment to accommodate his religious needs. *Id.* Thereafter, however, Petitioner's coworkers and their union representative, the UTU Local Chairman, began to complain that their rights under the contract were being violated because these employees were required to work positions that Petitioner refused. *Id.*

In addition, Amtrak management realized, over time, that Petitioner's preferred schedule could not be accommodated because the times he asked to be absent for religious reasons directly conflicted with the train schedule at the Washington Crew Base, which must staff four daily trains. Because Petitioner refused so many assignments, some vacancies had to be filled by Extra Board Conductors, regularly-assigned employees on their relief days, or Extra Board employees from other crew bases entirely—all resulting in additional expenses for Amtrak. Pet. App. at 9a-11a.

When Amtrak was unable to locate another qualified employee to serve as an Assistant Conductor, the Company was forced to operate trains without a full crew, and to pay additional allowances to those employees working as a "short crew." *Id.* At the same time, Amtrak continued to be obligated to pay full benefits to Petitioner. *Id.*

Petitioner made little effort to find a position which would enable him to observe his Sabbath by checking posted vacancies and applying for a transfer, despite suggestions from Amtrak management that he do so. Pet. App. at 12a.

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[2] Petitioner also identified five other periods, each of 24 hours' duration, and one eight-day period during each calendar year, when he could not be available for work because of his religious beliefs. Pet. App. at 8a.

The Disciplinary Process

First, Petitioner was counselled to comply with the Extra Board's on-call requirements. Pet. App. at 8a-9a. When his attendance did not improve, he was formally charged with excessive absenteeism under the disciplinary procedures outlined in the UTU Agreement. Pet. App. at 9a.[3] After a hearing, the excessive absenteeism charge was sustained. Yet, Petitioner was assessed only a formal reprimand. Even that disciplinary action subsequently was expunged from his file, with the proviso that further excessive absenteeism would result in dismissal. *Id.*

Nevertheless, Petitioner's attendance did not improve. *Id.* Accordingly, he was charged a second time with excessive absenteeism. A second hearing established that Petitioner was continuing to violate the UTU contract, to the detriment of both Amtrak and his fellow employees, despite two prior warnings. He was therefore terminated. *Id.*

Petitioner's Reinstatement

Petitioner appealed his dismissal to a Public Law Board, as was his right under the Railway Labor Act. Pet. App. at 13a. The Board affirmed Amtrak's finding that Petitioner was excessively absent in violation of the UTU contract, yet gave him one last chance by reinstating him without back pay. *Id.*

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[3] As required by the Railway Labor Act ("RLA"), 45 U.S.C. §§ 151 *et seq.*, the UTU agreement establishes a grievance-arbitration procedure for the resolution of employee disputes. An employee charged with a disciplinary offense receives an evidentiary hearing, with union representation, before a Company hearing officer who makes an initial determination as to whether the employee is guilty as charged. The union or employee may appeal any discipline through two levels within Amtrak, and ultimately to arbitration before a Public Law Board, a tribunal established pursuant to the RLA. The Board's findings and award are final and binding on all parties. 45 U.S.C. § 153(p), (q).

Following his reinstatement, Amtrak attempted to accommodate Petitioner's religious beliefs by suggesting that he apply for a different job than he previously had held, which would accommodate his Sabbath. Unfortunately, no such vacancies existed at the time. Amtrak also proposed a special accommodation agreement to Petitioner's union, the UTU, that would exempt him from contractual obligations that conflicted with his religious observances. The UTU declined to make such an agreement.

Ultimately, when a position became available in Salisbury, North Carolina, that Petitioner had sufficient seniority to hold and that would accommodate his religious needs, Amtrak management suggested he apply. Petitioner bid on and was awarded that position. Pet. App. at 13a.

Court Proceedings Below

Petitioner brought suit for lost wages and other relief for religious discrimination under Title VII before the United States District Court for the District of Columbia, claiming that Amtrak had wrongfully discharged him for refusing to work on his Sabbath. Following discovery, the parties filed cross-motions for summary judgment. District Judge Joyce Hens Green granted Amtrak's motion for summary judgment. While acknowledging that Petitioner had proposed numerous ways in which Amtrak could have accommodated his religious needs, the District Court found that it would have been impossible for Amtrak to accommodate him without violating the seniority provisions of the UTU agreement and thus incurring undue hardship, citing *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 80-81 (1977). Pet. App. at 15a-18a. Petitioner's summary judgment motion was denied. Pet. App. at 15a.

The United States Court of Appeals for the District of Columbia Circuit affirmed the District Court's decision granting summary judgment for Amtrak without opinion,

in an unpublished decision with no precedential effect. *See* D.C. Cir. Rules 11(c), 14(c). The Court emphasized the "unique circumstances of this case" which rendered Amtrak unable to accommodate Petitioner without undue hardship. Pet. App. at 1a-2a. Both a Petition for Rehearing and Suggestion for Rehearing *en banc* were denied thereafter. Pet. App. at 3a-5a.[4]

REASONS WHY THE PETITION SHOULD BE DENIED

The questions presented by Petitioner do not warrant review by this Court. The courts below properly applied this Court's decision in *TWA v. Hardison.* There is no conflict in the circuits over any issue material to this dispute. Finally, the question here is narrowly confined to a unique set of facts and lacks national or precedential importance.

I. THE D.C. CIRCUIT'S DECISION IS CONSISTENT WITH THIS COURT'S OPINION IN *HARDISON*

Title VII exempts employers from their statutory obligation to accommodate an employee's religious practices where such action would conflict with a *bona fide* senior-

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[4] A number of facts cited by Petitioner on appeal were never presented to the District Court. Specifically, Petitioner asserts that: 1) Amtrak supervision told him to work the Extra Board because that would be the easiest way to accommodate his religious needs (Pet. at 4); 2) Petitioner asked for information about transferring to a conductor position, but was told that a transfer would only "transfer the problem" (Pet. at 5); 3) his supervisors discouraged him from applying for a controller's position (*Id.*); and 4) on returning from vacation, Petitioner asked a crew caller about positions with Saturdays off and was told there were no vacancies, even though such a job allegedly was available. (Pet. at 18-19).

Of course, these issues may not be raised for the first time on appeal or before this Court. An appellant may not attempt to overturn a summary judgment based on factual disputes not previously presented to the district court. *NRM Corp. v. Hercules, Inc.*, 758 F.2d 676, 680 (D.C. Cir. 1985). *See also, Tarpley v. Greene*, 684 F.2d 1, 7 (D.C. Cir. 1982).

ity system. *See* 42 U.S.C. § 2000e-2(h) ("[I]t shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a *bona fide* seniority or merit system . . . .")

In interpreting this exemption, the Supreme Court in *Hardison* held that employers are not required to alter neutral seniority systems to accommodate an employee's religious practices, particularly where that seniority system arises out of a collective bargaining agreement, and where variance from the system would adversely affect other employees. *Hardison*, 432 U.S. at 80-81. *Hardison* emphasizes that an employer cannot be forced to violate a collective bargaining agreement in the name of religious accommodation under Title VII. 432 U.S. at 81.[5]

Amtrak's collective bargaining agreement with the UTU is neutral as to religion and explicitly creates rights and expectations in the Union itself, as well as its members. For covered employees, it creates a right to obtain more favorable work assignments based upon seniority, and obligates Amtrak to honor that system.

Like the employer in *Hardison*, Amtrak must award vacancies to those employees who apply, in specific order of seniority, or face contractual liability. Employees who would have a "seniority right" to certain work are entitled to extra payments if that work is assigned to a junior employee in violation of the UTU Agreement.

Because Petitioner asserted that he could not work from sundown Friday to sundown Saturday, Amtrak could not accommodate him and still comply with the seniority provisions of the UTU contract. Specifically, Amtrak was not obliged to arrange transfers for Petitioner, to permit

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[5] The Court held that "it would be anomalous to conclude that, by reasonable accommodation, Congress meant that an employer must deny the shift and job preference of some employees, as well as deprive them of their contractual rights, in order to accommodate or prefer the religious needs of others . . . ." *Id.*

voluntary job assignment "swaps" with other employees, or to create a temporary layoff for him, since such actions would have violated the contract. Accordingly, as *Hardison* teaches, and as the lower courts have held, it was impossible for Amtrak to accommodate Petitioner without incurring undue hardship, and no Title VII violation occurred.

Both the District Court and the Court of Appeals properly rejected Petitioner's argument that Amtrak may not raise an undue hardship defense, unless it first engaged in a useless attempt to accommodate his religious needs. Pet. App. at 2a, 14a n.3. This argument is inconsistent with the language of Title VII, as well as the Supreme Court's decisions in *Hardison* and *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60 (1986).

Subsequent applications of *Hardison* by the federal courts have made clear that an employer satisfies Title VII by showing that *any* possible accommodation would create an undue hardship. *See Toledo v. Nobel-Sysco, Inc.*, 892 F.2d 1481 (10th Cir. 1989), *cert. denied*, 495 U.S. 948 (1990); *EEOC v. Townley Eng'g & Mfg. Co.*, 859 F.2d 610 (9th Cir. 1988), *cert. denied*, 489 U.S. 1077 (1989); *Brener v. Diagnostic Ctr. Hosp.*, 671 F.2d 141, 144 (5th Cir. 1982); *Benefield v. Food Giant, Inc.*, 630 F. Supp. 78, 79 (M.D. Ga. 1985), *aff'd* 792 F.2d 1125 (11th Cir. 1986); *Pinsker v. Joint Dist. No. 28J*, 735 F.2d 388 (10th Cir. 1984); *Edwards v. School Bd. of City of Norton, Va.*, 483 F. Supp. 620, 625-27 (W.D. Va. 1980), *vacated in part on other grounds*, 658 F.2d 951 (4th Cir. 1981); *Murphy v. Edge Memorial Hosp.*, 550 F. Supp. 1185, 1188 (M.D. Ala. 1982). As the District Court emphasized in this case:

> If an employer can show that no accommodation was possible without undue hardship, it makes no sense to require that he engage in a futile act.

Pet. App. at 14a, n.3, quoting *Townley*, 859 F.2d at 615 (footnote omitted), citing *Ansonia*.

Even if Amtrak had an obligation to attempt to accommodate Petitioner, the Company clearly has demonstrated that it incurred undue hardship as a result of accommodating his routine absences from sundown Friday to sundown Saturday. The Supreme Court also held in *Hardison* that an employer need not make accommodations that would require it to incur more than a *"de minimis"* cost. *Hardison,* 432 U.S. at 84; *see also, Ansonia Bd. of Educ. v. Philbrook,* 479 U.S. at 64. The Court specifically found that "the costs to [the employer] of . . . paying overtime . . . would have created an undue burden on the conduct of [the employer's] business." *Hardison,* 432 U.S. at 84 n.15.

During his first nineteen months of employment, Petitioner was absent from work a total of 123 days. Amtrak had to compensate the employees filling in for Petitioner at a higher rate of pay than he would have earned, was forced to use Extra Board Conductors at a higher rate than Petitioner would have been paid, and had to fill vacancies left by the Petitioner with employees from other crew bases altogether. Pet. App. at 9a-10a. At times, Amtrak had no alternative but to operate trains with less than a full crew, manifestly diminishing the quality of service available to its passengers, for which Amtrak was required to pay "short crew" allowances to the employees who did work such trains. These are far more than *de minimis* impacts on Amtrak.

II. THERE IS NO CONFLICT BETWEEN THE CIRCUITS

Petitioner attempts to pique this Court's interest by characterizing the Circuits' interpretations of *Hardison* as being in conflict. His effort is unavailing.

Proof of Attempted Accommodation

First, Petitioner asserts that the District Court's opinion, as adopted by the Court of Appeals, conflicts with decisions from other courts as to whether the employer

must actually attempt accommodation, no matter how futile, as a condition precedent to arguing undue hardship. Pet. App. at 14-17. As the District Court emphasized in rejecting this argument, however, the decisions Petitioner initially relied upon do not accurately represent the state of the law following this Court's decision in *Ansonia,* and have been expressly disapproved by the same Court of Appeals which issued them. Pet. App. at 14a n.3, citing *EEOC v. Townley Eng'g & Mfg. Co.,* 859 F.2d at 615 n.7 ("[W]e have often allowed an employer who has made no attempt at accommodation to argue as justification undue hardship"), *Burns v. Southern Pac. Transp. Co.,* 589 F.2d 403 (9th Cir. 1978), *cert. denied,* 439 U.S. 1072 (1979), and *Anderson v. General Dynamics Convair Aerospace Div.,* 589 F.2d 397 (9th Cir. 1978), *cert. denied,* 442 U.S. 921 (1979).

Petitioner contends that the District Court ignored other decisions requiring proof of an effort to accommodate. Pet. at 15-17. Yet, these cases are all distinguishable in fundamental ways from the present dispute and from *Hardison. McDaniel v. Essex International, Inc.,* 696 F.2d 34 (6th Cir. 1982), dealt with a claim by a Seventh-Day Adventist who refused on religious grounds to join a union or pay union dues. The Sixth Circuit found *Hardison* inapplicable, since there was no issue of seniority presented, a factor accorded "special status" under Title VII, and no evidence that any employee would be adversely affected if Ms. McDaniel did not join the union. 696 F.2d at 37-38.

In the remaining cases, the employers were not bound by any collective bargaining agreement with respect to the distribution of work assignments, but instead had implemented work schedules that could be waived without contractual liability to any labor organization. *See EEOC v. Arlington Transit Mix, Inc.,* 957 F.2d 219, 221 (6th Cir. 1991) (newly enacted seniority-based scheduling policy for truck mechanics, some of whom were union members: labor agreement did not mandate

scheduling system); *EEOC v. Sterling Merchandise Co.*, 46 Fair Empl. Prac. Cas. (BNA) 1448 (N.D. Ohio 1987) (jewelry store manager required to work Saturdays when most sales made); *Edwards v. School Bd. of Norton, Va.*, 483 F. Supp. at 625-27 (school teacher working under individual contract setting attendance minimum). In contrast, any one of Petitioner's proposed accommodations would have violated the UTU agreement, and thus was not required under *Hardison*.

Claybaugh v. Pac. Northwest Bell Co., 355 F. Supp. 1 (D. Ore. 1973), is a *pre-Hardison* decision, that simply does not support the proposition that an employer may or must take actions which abridge the seniority rights of other employees under a union contract in order to accommodate one individual.

Indeed, Petitioner himself succinctly describes the current state of the law, as applied by the lower courts here:

> "[*particular jobs* may be completely incompatible with particular religious practices" and . . . in those cases "[i]t would be unfair to require employers faced with such irreconcilable conflicts to attempt futilely to resolve them. Employers faced with such conflicts should be able to meet their burden by showing that no accommodation is possible."

Pet. at 17, quoting *Toledo v. Nobel-Sysco., Inc.*, 892 F.2d at 1489.

Working the Extra Board at Amtrak, on an on-call basis, where members must be available 24 hours a day, seven days a week, represents such a "particular job" that happens to be incompatible with Petitioner's "particular religious practise" of not working from sundown Friday to sundown Saturday each week. The lower courts' finding to this effect, based solely on the unique factual circumstances of this case, is entirely consistent with *Hardison* and its progeny.

Use of Voluntary Substitutes

Second, Petitioner attacks the district court's finding that Amtrak need not utilize voluntary substitutes to accommodate his religious needs as in conflict with other circuits and wrong as a matter of law. (Pet. at 20-21.) Once again, his arguments are unavailing.

It is beyond question that an employer is not required to utilize voluntary substitutes to accommodate one employee's religious beliefs, where such actions would violate a *bona fide* collective bargaining agreement. *See, e.g., Cook v. Chrysler Corp.*, 779 F. Supp. 1010, 1024 (E.D. Mo. 1991), *aff'd*, 981 F.2d 336 (8th Cir. 1992) (employer and union *not* obliged to breach labor agreements to accommodate plaintiff where employer would be obligated to pay substitute or replacement workers extra); *Moore v. A.E. Staley Mfg. Co.*, 727 F. Supp. 1156, 1163 (N.D. Ill. 1989) (employer not required to breach multiple provisions of collective bargaining agreement to accommodate employee); *see also, Miller v. Drennon*, 56 Fair Empl. Prac. Cas. (BNA) 274, 278-79 (D. S.C. 1991), *aff'd*, 966 F.2d 1443 (4th Cir. 1992).

Here, the UTU Agreement specifies the order in which employees are to be called on the Extra Board, and provides for penalty payments to employees who are called out of their seniority order. As the District Court properly found, the use of substitutes to exchange with Petitioner would have violated that seniority system and subjected Amtrak to liability, both to the UTU and Petitioner's coworkers. Pet. App. at 16a.

The cases cited by Petitioner do not evidence any conflict whatsoever between the outcome in this action and decisions from other circuits. In *EEOC v. Hacienda Hotel*, 881 F.2d 1504 (9th Cir. 1989), liability was justifiably imposed for failing to accommodate an employee's need to observe her Sabbath on Saturday because: 1) the collective bargaining agreement did not require that work assignments be governed by seniority,

only whenever it was "possible and feasible"; and 2) the employer had accommodated a coworker's request for weekends off for non-religious reasons, and obviously could not deny the plaintiff equal treatment. 881 F.2d at 1513 n.7. Such factors are not present in this dispute.

None of the remaining cases upon which Petitioner relies dealt with the situation presented in this case, in which the employer would face liability for violation of any collective bargaining agreement as a result of utilizing voluntary substitutes. *See EEOC v. Arlington Transit Mix,* 957 F.2d at 221-22 (employer unilterally implemented a new work scheduling policy); *Boomsma v. Greyhound Food Management, Inc.*, 639 F. Supp. 1448, 1455 (W.D. Mich. 1986) ("defendant failed to convince the Court that allowing plaintiff to have procured a voluntary substitute would have violated the collective bargaining agreement . . . .") Accordingly, there is no reason for this Court to consider disturbing the lower courts' decision in this regard.

III. THE DECISION BELOW IS LIMITED TO ITS "UNIQUE CIRCUMSTANCES" AND DOES NOT RAISE ANY IMPORTANT ISSUE REQUIRING THIS COURT'S ATTENTION

The remainder of Petitioner's argument is devoted to convincing this Court that it should reexamine the appropriateness of a District Court's factual determinations in granting summary judgment for Amtrak.

As Petitioner himself points out, however, determinations of "reasonable accommodation" and "undue hardship" are fact-intensive inquiries, conducted on a case-by-case basis. Pet. at 18, citing *Protos v. Volkswagen of America, Inc.*, 797 F.2d 129, 134 (3d Cir. 1986), and *Tooley v. Martin-Marietta Corp.*, 648 F.2d 1239, 1243 (9th Cir.), *cert. denied,* 454 U.S. 1098 (1981). *See also, EEOC v. Hacienda Hotel,* 881 F.2d at 1512, citing *Hardison,* 432 U.S. at 77. Accordingly, such mat-

ters do not warrant this Court's attention, especially since the Court of Appeals' decision is limited to the "unique circumstances" of this dispute.[6]

Given the singular nature of the Amtrak Extra Board, which requires 24-hour a day, seven-day a week availability, there is simply no reason why Supreme Court review is warranted. Few employers outside the railroad industry have such a system. Moreover, the lower courts' opinions emphasize that an employer is excused from attempting accommodation only in those rare circumstances where it is absolutely *impossible* to accommodate an individual's religious needs without incurring undue hardship, such that any attempt would be a "futile act".

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[6] In any event, the lower courts properly rejected Petitioner's arguments on the merits.

First, Petitioner insists that Amtrak was obligated to find him a different job. Pet. at 17-20. This is not the case. *See, e.g., Gibson v. Missouri Pac. R.R.*, 620 F. Supp. 85, 88 (E.D. Ark. 1985), *dismissed*, 786 F.2d 1171 (8th Cir. 1986); *Turpen v. Missouri-Kansas-Texas R. Co.*, 736 F.2d 1022, 1027 (5th Cir. 1984); *McDonald v. McDonnell Douglas Corp.*, 35 Fair Empl. Prac. Cas. (BNA) 1661 (N.D. Okla. 1984); *Ryan v. U.S. Dep't. of Justice*, 950 F.2d 458, 462 (7th Cir. 1991), *cert. denied*, 112 S. Ct. 2309 (1992).

Second, Petitioner contends that Amtrak was required to use all of the steps in the progressive discipline process and could not discharge him before doing so—a baseless argument. Pet. at 27-29. As the District Court found, Amtrak did utilize progressive discipline until Petitioner made it abundantly clear that to do so would be an exercise in futility. Pet. App. at 8a-9a. Moreover, neither of the cases he cites deals in any way with progressive discipline. *See Brown v. General Motors Corp.*, 601 F.2d 956 (8th Cir. 1979); *Haring v. Blumenthal*, 471 F. Supp. 1172 (D.D.C. 1979), *cert. denied*, 452 U.S. 939 (1981). Nor does *Brown* involve any question of an accommodation violating a collective bargaining agreement.

Finally, nothing in the record suggests that Petitioner received any less favorable treatment than other excessively absent Extra Board members. Pet. at 27. Indeed, the entire basis of Petitioner's claim is that he was entitled to special privileges that his coworkers did not enjoy.

As *Hardison* teaches, facially neutral seniority systems for scheduling employees, imposed by collectively bargained agreements, enjoy special status under Title VII. This Court need not revisit that fundamental principle.

CONCLUSION

For the foregoing reasons, Amtrak respectfully requests that the Court deny the Petition for a Writ of Ceriorari.

Respectfully submitted,

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